

BEFORE THE  
**Federal Communications Commission**  
 WASHINGTON, D.C. 20554

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SEP 16 1994

In the Matter of:

Amendment of Section 73.202(b), )  
 The Table of Allotments, FM )  
 Broadcast Stations. )  
 (Falmouth, Mashpee, Harwichport, )  
 and Wellfleet, Massachusetts) )  
 )  
 To: The Commission )

MM Docket No. 94-85

FCC FILE ROOM

PETITION FOR RULEMAKING AND CONTINGENT COUNTERPROPOSAL  
IN MASS MEDIA DOCKET NO. 94-85

1. Joan Orr, hereinafter "Petitioner" respectfully submits the following Petition for Rulemaking and contingent Counterproposal in Mass Media Docket 94-85. Petitioner proposes to assign Channel 230A as a first FM allotment to the community of Wellfleet in Barnstable County (Cape Cod), Massachusetts. Channel 230A is unassigned in Southeastern Massachusetts and may be allocated to Wellfleet in accordance with all Commission spacing rules except with respect to station WFXR, Channel 228A, in Harwichport, Massachusetts. To remove this obstacle, Petitioner proposes herein to substitute Channel 226A for Channel 228A at Harwichport and to modify the WFXR license to specify operation on Channel 226A. As illustrated in this petition, Channel 226A may be substituted for Channel 228 in full compliance with the Commission's FM spacing rules. Your petitioner agrees to fully reimburse WFXR for the direct

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costs of making the proposed frequency change.

2. The community of Wellfleet contains 20.5 square miles of land area and, according to the 1993 Annual Town Report, had a 1993 population of 2,991 persons, 1,957 of which were registered voters in the town. The Town is governed by a five person Board of Selectmen. Wellfleet's legislative business is conducted in an open town meeting under the direction of an elected town moderator. The Town has two libraries, one in Wellfleet, the other in South Wellfleet. Wellfleet has its own elementary school under the oversight of an elected school committee. Junior and senior high school students attend The Nauset Regional School in Wellfleet or Cape Cod Technical High School in the town of Harwich. Wellfleet is located on the neck of Cape Cod between Eastham and Truro. The town is a popular resort area with a number of beaches, harbors, and a fine marina. There are a number of retail establishments in town geared to support both the year round and summer population of Wellfleet. There is, however, no local radio station, a situation your petitioner hopes to address.

3. As demonstrated here, Channel 230A can be assigned to Wellfleet in full accordance Section 73.202(b)(1) of the Commission's Rules provided WFXR in Harwichport, MA operates

on Channel 226A instead of Channel 228A. In order to meet spacing requirements with respect WHJY, Channel 231B in Providence, Rhode Island, a reference site approximately 1.6 kilometer Northeast of the Wellfleet center is used as the technical reference point for this petition. The coordinates of this point are:

41 degrees 49' 40" North Latitude  
71 degrees 01' 13" West Longitude

The reference coordinates describe a point of 31 meters ground elevation located off Gross Hill Road in Wellfleet. Figure 1 illustrates the location of this reference point on a portion of the Wellfleet USGS 7.5 minute topographical map. No representation is made here that the reference point given is actually available as a transmitter site. However, there appears to be a sufficient amount of land available within the fully spaced allocation window for Channel 230A so that a proper transmitter site can be specified as part of the application process. In the unlikely event that a fully spaced site cannot be located, the Commission's Rules now provide additional flexibility in locating FM transmitter sites through the use of contour protection.

Table 1 demonstrates compliance with the spacing requirements set forth in Table A, Section 73.207(b)(1) of the Commission's Rules.

Table 1  
Detailed Allocation Study - Channel 230A

<u>Channel</u>	<u>Station</u>	<u>Location</u>	<u>Distance in km</u>	
			<u>Actual</u>	<u>Required</u>
227B	WSNE	Taunton, MA	105.9	69
228A	WFXR	Harwichport, MA	23.1*	31*
229B	WCGY	Lawrence, MA	125.9	113
230B	WXGY-FM	Lewiston, ME	244.2	178
231B	WHJY	Providence, RI	112.7**	113**
233B	WJMN	Boston, MA	107.3	69
284B	WKPE-FM	Orleans, MA	18.5	15

\* This short-spacing will be cured by moving WFXR from Channel 228A to Channel 226A.

\*\* 112.7 kilometers rounds to 113 kilometers per FCC policy.

4. The information in Table 2 demonstrates that, using its present transmitter site, WFXR can operate on Channel 226A in accordance with all of the Commission's FM Allocation Rules. The coordinates of the WFXR transmitter site are:

41 degrees 44' 19" North Latitude  
70 degrees 00' 40" West Longitude

Table 1  
Detailed Allocation Study - WFXR, Channel 226A

<u>Channel</u>	<u>Station</u>	<u>Location</u>	<u>Distance in km</u>	
			<u>Actual</u>	<u>Required</u>
224A	WMVY	Tisbury, MA	60.2	31
225B	WBOS-FM	Brookline, MA	118.7	113
226B	WMGX	Portland, ME	217.8	178
226B	WHYN-FM	Springfield, MA	225.6	178
227B	WSNE	Taunton, MA	107.2*	105*
229B	WCGY	Lawrence, MA	142.4	69
233B	WJMN	Boston, MA	107.3	69
280A	WOCN-FM	S. Yarmouth, MA	12.3	10

\* WFXR currently operates on Channel 228A, 200kHz from the frequency used by WSNE. The Channel 226A frequency proposed for WFXR is also 200kHz from WSNE. Since no change in frequency separation will occur between WFXR and WSNE, the spacing used when WFXR was originally allocated is specified here.

5. Petitioner requests that this proposal to assign Channel 230A to Wellfleet and substitute Channel 226A for Channel 228A in Harwichport be considered as a contingent counter-proposal in Mass Media Docket 94-85. That Docket proposes re-allocating Channel 266A from Falmouth to Mashpee, Massachusetts and modifying the license of WFAL, Channel 266A in Falmouth to specify Mashpee as a new community of license. At first blush the nexus between the two proposals may not be apparent. But here's how they potentially tie together.

To facilitate the proposed Channel 230A allocation at Wellfleet, the present Channel 228A Allocation to Harwichport, MA, now occupied by WFXR-FM, must be changed from Channel 228 to Channel 226. WFXR is owned by J.J. Taylor Co., Inc. which also owns WFAL in Falmouth, Massachusetts and WCOD-FM in Hyannis, an unincorporated Village in the town of Barnstable, Massachusetts. All three stations are licensed in Barnstable County and all three stations serve overlapping areas on Cape Cod. In Mass Media Docket 94-85 J.J. Taylor seeks to have Channel 266A, now occupied by WFAL, reassigned from Falmouth to Mashpee, Massachusetts. If Channel 266A is assigned to Mashpee, WFAL may, as a result, move its transmitter site closer to Mashpee which shares a common border with Barnstable. Depending on the amount of 70 dbu contour overlap created between WCOD and WFAL, J.J. Taylor may then need to re-locate the WFXR Channel 228 transmitter

site to comply with the Commission's duopoly rules. The substitution of Channel 226 for Channel 228 is predicated on the use of the present WFXR transmitter site. If, as a result of changes proposed in Docket 94-85, WFXR seeks to use a different transmitter site, that site may not meet all applicable spacing rules for Channel 226A. This would obviously thwart Petitioner's plans to assign Channel 230A to Wellfleet. To avoid this potentially difficult situation, it makes sense to consider all of the instant proposals in a single docket sharing a common time line.

6. Table 3 is a summary of the changes to the Table of Allotments proposed herein. Please note that Petitioner does not oppose moving Channel 266A from Falmouth to Mashpee providing that change has no adverse effect upon the other changes necessary to assign Channel 230A to Wellfleet.

Table 3  
Summary of Changes Proposed


<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Falmouth, MA	266A, 270B	270B
Mashpee, MA	---	266A
Harwichport, MA	228A	226A
Wellfleet, MA	---	230A

7. Petitioner represents that if Channel 230A is assigned to Wellfleet, Massachusetts, she will promptly file or cause to be filed an application for a Construction Permit to activate the frequency. Petitioner further certifies that she

will pay the direct costs of converting the operation of WFXR from Channel 228A to Channel 226A.

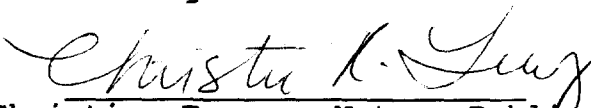
8. Petitioner further certifies that the statements in this Petition for Rulemaking and Contingent Counterproposal are true and correct to the best of her knowledge and belief and are made in good faith.

Respectfully submitted on September  
17, 1994,

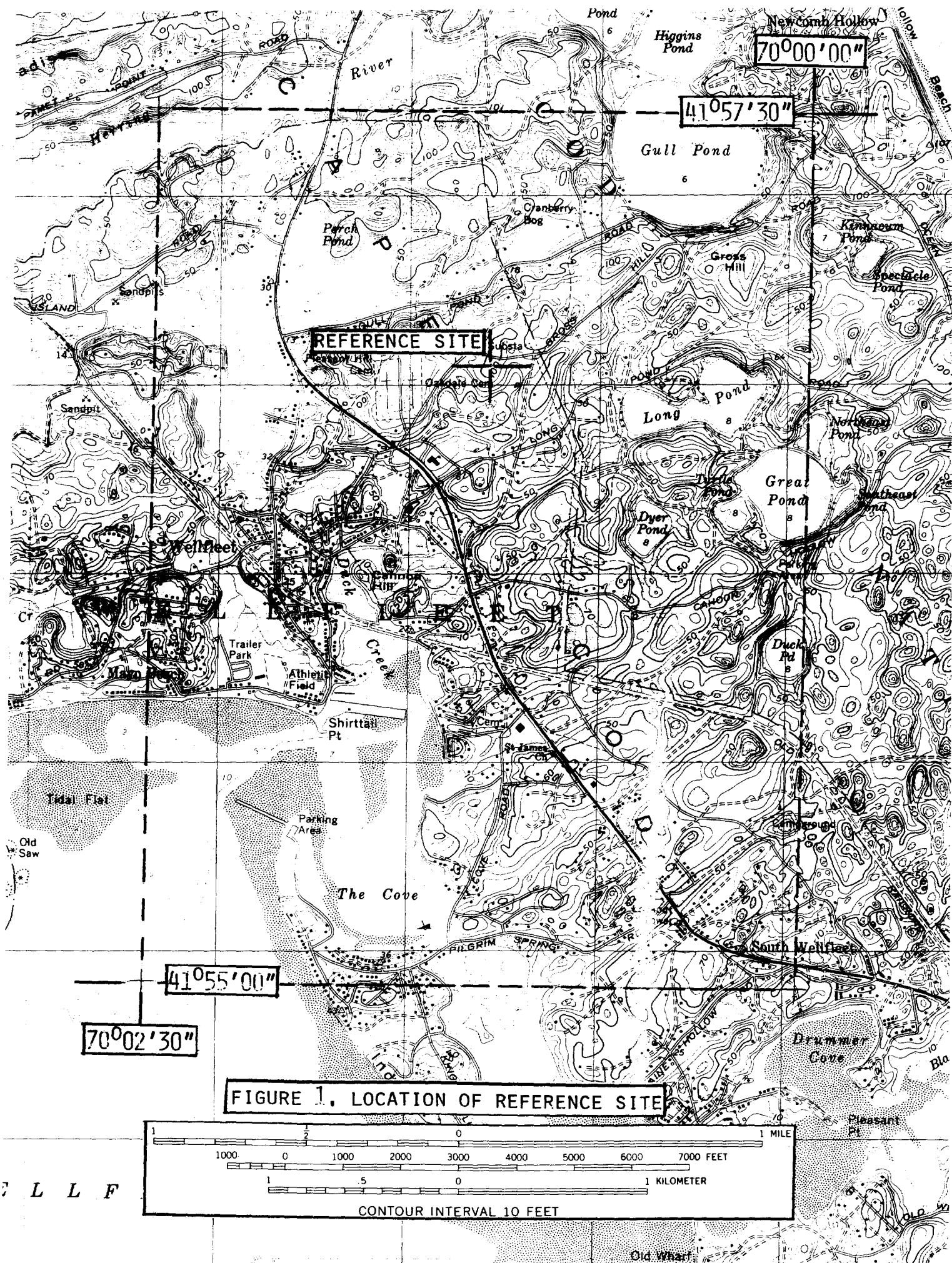
  
Joan Orr  
Box 1443, 38 Thad Ellis Road  
Brewster, MA 02631

(508) 896-5557

Joan Orr appeared before me this 17th day of September, 1994 and personally affixed her signature above.

  
Christine Trenz - Notary Public

My Commission Expires July 3, 1998





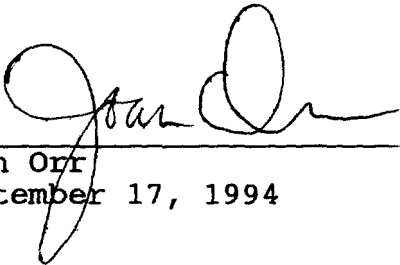
CERTIFICATE OF SERVICE

I, Joan Orr, hereby certify that a copy of this Petition for Rulemaking and Contingent Counterproposal will be sent via U. S. Mail, first class postage prepaid on Saturday, September 17, 1994, to the following:

WFAL Radio, J.J. Taylor Co., Inc.  
c/o Joseph A Belisle  
Leiberwitz and Associates  
1 Southeast 3rd Avenue, Suite 1450  
Miami, FL 33131

WFXR Radio  
c/o WCOD Radio  
754 West Main Street  
Hyannis, MA 02601

WFXR Radio  
109 Main Street  
Harwichport, MA 02645

  
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Joan Orr  
September 17, 1994